IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1337 OF 2007

CHINNARAJ & ORS. ..... APPELLANTS

VERSUS

STATE OF TAMIL NADU ..... RESPONDENT

O R D E R

This appeal is directed against the judgment of the trial court as well as the High Court whereby the six appellants have been convicted and sentenced to various terms of imprisonment for offences punishable under Section 302, 149 etc. of the IPC.

The facts leading to the appeal are as under:-

The accused-appellants as also the complainant party were all residents of village Mallapuram. As per the evidence on record the complainants belonged to the All India Anna Dravida Munnetra Kazhagam whereas the appellants were members of the Dravid Munnetra Kazhagam. The evidence also reveals the existence of acute enmity between the two warring families on several issues including the grazing of cattle.

On 8th June, 2001, at about 8:00a.m., the

appellants armed with deadly weapons such as knives, iron rods and sticks came towards the house of P.W.1 when they were stopped by the deceased Pachaya Pillai and his relatives who questioned them as to what they were doing at that place. The appellants thereupon attacked Pachaya Pillai causing him serious injuries on the head and when the others, P.Ws.1 to 6, who were close relatives of Pachaya Pillai, intervened on his behalf they too were caused injuries. As a consequence of the injuries sustained, Pachaya Pillai fell to the ground. He was thereafter removed to the Government Hospital at Kallakuruchi and was examined by P.W. 8 – Dr. Sundara Murthy who was then on duty who further referred him to the Government Hospital, Salem on account of his serious condition. The injured witnesses, P.Ws. 1 to 6, were also examined by P.W. 16 – Dr. Uday Kumar and their injuries were recorded in the Accident Register Exhibits P8 to P13. Intimation was also sent to the Kallakuruchi police station whereupon P.W. 19 the Police Sub Inspector went to the Government Hospital Kallakuruchi and recorded the statement of P.W. 1 (Exhibit P1) and on its basis the formal FIR was registered on 24th January, 2001 at about 4:00 P.M. P.W. 19 also went to the place of incident and made the necessary inquiries. As Pachaya Pillai was in a serious condition, the offence under

Section 307 was incorporated as well and further investigation in the matter was taken up by the Inspector, P.W. 20.

After information had been received from the Government Hospital, Salem that Pachaya Pillai had died, Section 302 of Indian Penal Code was also added on against the appellants. The dead body of the deceased was also subjected to a post-mortem examination which was carried out by P.W. 17 - Dr. Ravi Shankar and he opined that the death had been caused due to severe head injuries.

The trial court relying on the evidence of P.Ws. 1 to 6, all injured and very close relatives of the deceased, as also the medical evidence which supported the ocular version that the injuries could have been caused with knives, sticks and rods, and that the FIR though recorded belatedly still cast no doubt on the prosecution story, convicted and sentenced the accused/ appellants in the following terms:-

Rank of the accused	charges	Conviction and sentence.
1st accused	147, 148, 323, 324, 325, 307 and 302 read with 149 IPC	R.I. for 7 years for an offence under Section 307 I.P.C. and Life Imprisonment for an offence under Section 302 IPC and the sentences should run concurrently.
2nd accused	-do-	R.I. for two years for an offence under Section 324 IPC, RI for seven years for an offence under Section 307 read with 149 IPC and life

		imprisonment for an offence under Section 302 read with 149 IPC and the sentences should run concurrently.
3rd accused	-do-	Each six months simple imprisonment for an offence under Section 323 (2 counts) IPC seven years RI for an offence under Section 307 read with 149 IPC and Life imprisonment for an offence under Section 302 read with 149 IPC and the sentences should run concurrently.
4th accused	-do-	Six months simple imprisonment for an offence under Section 323 IPC three years RI for an offence under Section 325, seven years RI for an offence under Section 307 read with 149 IPC and Life imprisonment for an offence under Section 302 read with 149 IPC and the sentences should run concurrently.
5th accused	-do-	Six months simple imprisonment for an offence under Section 323 IPC seven years RI for an offence under Section 307 read with 149 IPC and Life imprisonment for an offence under Section 302 read with 149 IPC and the sentences should run concurrently.
6th accused	-do-	Six months simple imprisonment for an offence under Section 323 IPC seven years RI for an offence under Section 307 read with 149 IPC and Life imprisonment for an offence under Section 302 read with 149 IPC and the sentences should run concurrently.

As already indicated above, the judgment and sentenceof the trial court has been confirmed by the High Court in appeal.

Mr. Balasubramanian, the learned senior counsel for the appellants has pointed out that the genesis of the incident had been suppressed by the prosecution and as a matter of fact, some incident prior to the present one involving the same parties had taken place at 7:30A.M. and had been reported to the police but no investigation had been made in that

direction, or if made falsified the prosecution story and had, therefore, been suppressed. As a corollary to this argument, he has argued that the injuries on the person of the accused had not been explained which caused a doubt as to what had actually happened on the crucial day and as cross cases had been registered inter se the parties, they ought to have been tried by a common forum. He has in support of the second argument, relied upon State of M.P. v. Mishrilal (Dead) & Ors. 2003 (9) SCC 426 to the effect that cross cases should be tried together and that if the genesis of the incident was suppressed then the prosecution should suffer.

The learned counsel for the State, has however, submitted that prosecution story had been given by P.W. 1 to P.W. 6 all injured witnesses, and there was absolutely no reason whatsoever to doubt their testimony. He has also submitted that there was undoubtedly some delay in the lodging of the FIR and perhaps some flaw in the investigation of the case as the defence version had not been investigated by the police, but these factors by themselves could not take away the effect of the evidence of six injured witnesses. He has finally submitted that the complainant party should not be made to suffer on account of a faulty investigation. He has cited State

of Karntaka v. K. Yarappa Reddy (1999) 8 SCC 721 in support of this plea.

We have heard the learned counsel for the parties and gone through the record very carefully.

Concededly there are six injured witnesses all belonging to the family of the deceased. It is also a fact that all the appellants are very closely related to each other, the relationship inter se being A2 to A4 are the sons of A1, A5 is the son-in-law of A1 and A6 father of A5. It is, therefore, apparent that the entire family has been roped in for this incident. As already mentioned above, it has come in the evidence of P.W. 1 and P.W.7 that the relations between the parties was gravely strained not only because of rival political affiliations but also on account of other issues such as grazing of cattle. It is in this background that the evidence in this matter will have to be examined.

The first point that has been raised by the learned counsel for the appellant was as to the delay in the lodging of the FIR inasmuch as the FIR Exhibit P1 was not the first report of the occurrence, and even assuming it to be so, it had been lodged after a delay of 32 hours and as the said delay had not been explained, a serious dent in the prosecution's case had been made. In this connection, we have gone through

the evidence of P.W. 1 who was the brother-in-law of the deceased. He stated that the police had taken a statement from him in the Kallakuruchi Government Hospital on the 23rd January, 2001. He reiterated this statement repeatedly in the course of his cross examination as well. Likewise, P.W. 3 Manimegalai deposed that the complaint had been lodged at about 8:00 A.M. on the morning of 23rd January, 2001 but in the next breath pleaded ignorance as to whether it had been lodged on that day. Likewise, P.W.6-Panchali falsified that the police personnel had met her and the other injured witnesses at about 8 o'clock on the day of the incident and her statement had been recorded by the police in the hospital on that day. We also see from the evidence of P.Ws. 8 and 16, the two doctors, that information had been sent to the police station as per procedure soon after the injured had been admitted to the hospital. To our mind, therefore, the fact that some statement had been recorded by the police on the 23rd January, 2001 is clear from the prosecution evidence itself. P.W. 19, the police officer who had recorded the FIR, however, disowned the statement made by P.W. 1 and insisted that the FIR had been recorded on the next day i.e. 24th January, 2001. This statement is in stark contrast to the statement of the witnesses who had stated to the contrary. Mr.

Balasubramanian, therefore, appears to be right when he contends that the report recorded on 24th February, 2001 was not the first report and that a statement recorded on 23rd January, 2001, had been suppressed by the prosecution. The connected argument with regard to the delay in the lodging of the FIR, thus, becomes irrelevant in this background.

Mr. Balasubramanian's second submission has equal merit. It has come in the evidence of P.W. 19 and P.W. 20 that the appellants had also reached the hospital at about 8:00a.m. on the 23rd January, 2001 and that they had gone to the hospital directly from the place of incident. As per the prosecution story, the present incident had happened at about 8:00a.m. that is about half an hour after the first incident. The High Court has found that as the two incidents were separated not only in time but also by distance it would not have been necessary for the investigating officers to investigate the defence story. We find this observation to be erroneous, in the light of the fact that if the appellants had gone straight to the hospital at 7:30 a.m., the question of their causing the injuries to the complainant party, a kilometre away at 8:00a.m. would not have been possible. It appears that the warring parties had received injuries in one

and the same transaction and the finding of the High Court to the contrary, thus, appears to be against the record. It is also significant that the police had itself registered Crime No. 25/2001 with respect to the complaint lodged by the accused and during investigation it had transpired that the injuries had been received by them at almost the same time. P.W. 19, however, stated that despite the fact that the case had been registered, he had not cared to take into possession the injury certificates in respect of Crime No. 25/2001. The evidence of P.W. 20 in respect of Rajadurai is even more categoric. He deposed in his cross examination that he had heard that two incidents had taken place at the same time and place and both parties had received injuries during the course of that fracas. He, further, went to say that though this information was with him, he had not made any inquiries even from the investigating Sub Inspector so as to ascertain the true state of affairs. The inference that has to be drawn from these lapses is that a deliberate attempt to suppress the defence story had been made. It is, therefore, obvious that as cross cases had been registered with respect to the same incident and in the light of Mishrilal's case (supra), in such a case would have been that they should be tried together irrespective of the nature of the

offences involved so as to avoid a conflict of judgments at the hands of two different courts. In the present matter, however, despite the police officers being conscious of the fact that both parties had suffered injuries in the same transaction it had been thought fit to file separate charge sheets. This is contrary to the dictum laid down in the aforesaid judgment.

In most cases that we have come across, it is often difficult to ascertain from the prosecution evidence as to whether some injuries had indeed been suffered by the accused but in the present matter we have some very categoric admissions by the injured witnesses as also by the investigating officers. The injured witnesses have been very categoric that the first report with regard to the incident had been recorded on the 23rd January, 2001. Likewise, P.Ws. 19 and 20 were categoric in admitting that the injuries had been suffered by the appellants in the same incident. These injuries remain unexplained. It is in this situation that this Court in Babu Ram v. State of Punjab (2008) 2 SCC Criminal 727 held as under:

> **"It is well-settled law that in a murder case, the non-explanation of the injuries sustained by the accused at**

> **about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences:**
>
> **"1. that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;**
>
> **2. that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable.**
>
> **3. that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case." *[see Lakshmi Singh v. State of Bihar (1976) 4 SCC 394 p. 401 para 12]***

It is true, as contended by the learned State counsel, that the statements of the injured eye witnesses have precedence over a dishonest investigation. However, this submission poses great difficulties and pitfalls for a court, as it becomes difficult to discover as to which of the two versions is correct; the one given by the accused or the one given by the prosecution, in the background that the investigator has not done his duty in a fair and impartial manner. The Court must, therefore, fall back upon its own experience and have an insight into the nature of the crime in an effort to determine as to what might have happened. It is also significant that if material facts relevant to the matter are suppressed

by the prosecution, the tilt must be in favour of the accused. Undoubtedly, every injury, however insignificant on the person of an accused is not to be explained by the prosecution but when we have a large number of injuries, a faulty investigation and political and family rivalries between the contesting parties, the Court has to draw its own conclusions.

We, accordingly, allow this appeal, set aside the conviction of the accused-appellants. It is stated by Mr. Balasubramaniam, that his clients are in jail. We direct that they shall be set at liberty forthwith if not required in connection with any other case.

.....J
[HARJIT SINGH BEDI]

.....J
[J.M. PANCHAL]

NEW DELHI
SEPTEMBER 16, 2009.

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VERSUS

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O R D E R

We have heard the learned counsel for the parties.

Vide our separate reasoned order, we have allowed the appeal and set aside the conviction of the appellants.

It is stated by Mr. Balasubramaniam, the learned senior counsel for the appellants that the appellants are in jail. We direct that the appellants shall be set at liberty forthwith if not required in connection with any other case.

The reasoned order to follow.

.....J
[HARJIT SINGH BEDI]

.....J
[J.M. PANCHAL]

NEW DELHI
SEPTEMBER 16, 2009.